

June 25, 2021

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**BY: _____ **JU**
DEPUTY**JOHN C. PHELPS,**
Plaintiff,

v.

**UNIVERSITY OF TEXAS AT SAN
ANTONIO HEALTH SCIENCES
CENTER and LANCE VILLERS,**
Defendants.§
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§**Civil Action No. 5:20-cv-01466-OLG****ORDER**

On this day, the Court considered the status of the above captioned case. Currently pending before the Court is Defendants' Motion to Dismiss Plaintiff's Original Complaint (docket no. 11) (the "Motion"). After careful review of the record, the Court finds that this case should be DISMISSED WITHOUT PREJUDICE pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to comply with a court order.

Plaintiff John C. Phelps ("Plaintiff") initiated this lawsuit against Defendants University of Texas at San Antonio Health Sciences Center and Lance Villers ("Defendants") alleging two causes of action: disability discrimination under Title VII and disability discrimination under Title II of the Americans with Disabilities Act. *See* docket no. 1. On February 23, 2021, Plaintiff moved to stay this case for 60 days to allow him to find new counsel, and, as a result, this case was stayed until April 25, 2021. *See* docket no. 6. On April 28, 2021, Defendants filed this Motion seeking to dismiss Plaintiff's claims for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). *See* docket no. 11. After Plaintiff failed to timely respond to the Motion, the Court entered a Show Cause Order, giving Plaintiff an additional ten days to file his response. *See* docket no. 12. The Court specifically warned Plaintiff that his

failure to respond would result in his case being dismissed pursuant to Federal Rule of Civil Procedure 41(b). *See id.* Despite this warning, Plaintiff has yet to respond or otherwise participate in the litigation.

Rule 41(b) permits the Court to dismiss an action “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order.” Fed. R. Civ. P. 41(b). Because Plaintiff failed to timely respond to the Motion and then failed to respond to this Court’s Show Cause Order, the Court finds that dismissal pursuant to Rule 41(b) is appropriate. In the alternative, the Court finds that Defendants’ Motion should be GRANTED AS UNOPPOSED. This case is therefore DISMISSED WITHOUT PREJUDICE.

IT IS THEREFORE ORDERED that this case is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute and comply with a court order pursuant to Federal Rule of Civil Procedure 41(b), and Defendants’ Motion to Dismiss Plaintiff’s Original Complaint (docket no. 11) is **GRANTED AS UNOPPOSED**.

This case is **CLOSED**.

It is so **ORDERED**.

SIGNED this 25th day of June, 2021.



ORLANDO L. GARCIA
CHIEF UNITED STATES DISTRICT JUDGE